

Protecting Montana Ranching for Generations to Come

The Rocky Mountain Front Heritage Act Resource Guide

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“My family has been ranching here for 128 years and the Heritage Act will help protect the Front’s wild lands and working landscapes for generations to come.”

***-Karl Rappold, Dupuyer
Rancher***

Congressional Guidance on Grazing in Wilderness

Section 4(d)(4)(2) of the Wilderness Act states that “the grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.” The use of the word “shall” is a Congressional mandate and demonstrates clear Congressional intent that already established grazing be allowed to continue in wilderness.

In the committee report accompanying 1980 legislation designating wilderness in several western states (PL 96-560), the House Interior and Insular Affairs Committee developed comprehensive guidance on grazing in national forest wilderness.¹ Identical guidance for Bureau of Land Management wilderness areas was included in the report accompanying the Arizona Desert Wilderness Act of 1990 (PL 101-628).² The guidance is known as the Congressional Grazing Guidelines. It is reprinted in its entirety below.

GRAZING IN NATIONAL FOREST WILDERNESS AREAS

Section 4(d)(4)(2) of the Wilderness Act states: “the grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.”

The legislative history of this language is very clear in its Intent that livestock grazing, and activities and the necessary facilities to support a livestock grazing program, will be permitted to continue in National Forest wilderness areas, when such grazing was established prior to classification of an area as wilderness.

Including those areas established in the Wilderness Act of 1964. Congress has designated some 188 areas, covering lands administered by the Forest Service, Fish and Wildlife Service, National Park Service and Bureau of Land Management as components of the National Wilderness Preservation System. A number of these areas contain active grazing programs, which are conducted pursuant to existing authorities. In all such cases, when enacting legislation classifying an area as wilderness, it has been the intent of the Congress, based on solid evidence developed by testimony at public hearings, that the practical language of the Wilderness Act would apply to grazing within wilderness areas administered by all Federal agencies, not just the Forest Service. In fact, special language appears in all wilderness legislation, the intent of which is to assure that the applicable provisions of the Wilderness Act, including Section 4(d)(4)(2), will apply to all wilderness areas, regardless of agency jurisdiction.

¹ H. Rep. 96-617.

² H. Rep. 101-405.

CONTINUED: GRAZING IN NATIONAL FOREST WILDERNESS AREAS

Further, during the 95th Congress, Congressional committees became increasingly disturbed that, despite the language of section 4(d)(4)(2) of the Wilderness Act and despite a history of nearly 15 years in addressing and providing guidance to the wilderness management agencies for development of wilderness management policies, National Forest administrative regulations and policies were acting to discourage grazing in wilderness, or unduly restricting on-the-ground activities necessary for proper grazing management. To address this problem, two House Committee on Interior and Insular Affairs Reports (95-620 and 95-1821) specifically provided guidance as to how section 4(d)(4)(2) of the Wilderness Act should be interpreted.

This guidance appeared in these reports as follows:

Section 4(d)(4)(2) of the Wilderness Act states that grazing in wilderness areas, if established prior to designation of the area as wilderness, “shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture”. To clarify any lingering doubts, the committee wishes to stress that this language means that there shall be no curtailment of grazing permits or privileges in an area simply because it is designated as wilderness. As stated in the Forest Service regulations (36 CFR 293.7), grazing in wilderness areas ordinarily will be controlled under the general regulations governing grazing of livestock on National Forests* * *”. This includes the establishment of normal range allotments and allotment management plans. Furthermore, wilderness designation should not prevent the maintenance of existing fences or other livestock management improvements, nor the construction and maintenance of new fences or improvements which are consistent with allotment management plans and/or which are necessary for the protection of the range.

Despite the language of these two reports, RARE II hearings and field inspection trips in the 96 Congress have revealed that National Forest administrative policies on grazing in wilderness are subject to varying interpretations in the field, and are fraught with pronouncements that simply are not in accordance with section 4(d)(4)(2) of the Wilderness Act. This had led to demands on the part of grazing permittees that section 4(d)(4)(2) of the Wilderness Act be amended to clarify the intentions of Congress. However, because of the great diversity of conditions under which grazing uses (including different classes of livestock) are managed on the public lands, the Committee feels that the original broad language of the Wilderness Act is best left unchanged. Any attempts to draft specific statutory language covering grazing in the entire wilderness system (presently administered by four separate agencies in two different Departments) might prove to be unduly rigid in a specific area, and deprive the land management agencies of flexible opportunities to manage grazing in a creative and realistic site specific fashion. Therefore, the Committee declined to amend section 4(d)(4)(2) of the Wilderness Act, agreeing instead to reaffirm the existing language and to include the following nationwide guidelines and specific statements of legislative policy. It is the intention of the Committee that the guidelines and policies be considered in the overall context of the purposes and direction of the Wilderness Act of 1964 and this

Act, and that they be promptly, fully, and diligently implemented and made available to Forest Service personnel at all levels and to all holders of permits for grazing in National Forest Wilderness areas:

1. There shall be no curtailments of grazing in wilderness areas simply because an area is, or has been designated as wilderness, nor should wilderness designations be used as an excuse by administrators to slowly "phase out" grazing. Any adjustments in the numbers of livestock permitted to graze in wilderness areas should be made as a result of revisions in the normal grazing and land management planning and policy setting process, giving consideration to legal mandates, range condition, and the protection of the range resource from deterioration.

It is anticipated that the numbers of livestock permitted to graze in wilderness would remain at the approximate levels existing at the time an area enters the wilderness system. If land management plans reveal conclusively that increased livestock numbers or animal unit months (AUMs) could be made available with no adverse impact on wilderness values such as plant communities, primitive recreation, and wildlife populations or habitat, some increases in AUMs may be permissible. This is not to imply, however, that wilderness lends itself to AUM or livestock increases and construction of substantial new facilities that might be appropriate for intensive grazing management in non-wilderness areas.

2. The maintenance of supporting facilities, existing in the area prior to its classification as wilderness (including fences, line cabins, water wells and lines, stock tanks, etc.), is permissible in wilderness. Where practical alternatives do not exist, maintenance or other activities may be accomplished through the occasional use of motorized equipment. This may include, for example, the use of backhoes to maintain stock ponds, pickup trucks for major fence repairs, or specialized equipment to repair stock watering facilities. Such occasional use of motorized equipment should be expressly authorized in the grazing permits for the area involved. The use of motorized equipment should be based on a rule of practical necessity and reasonableness. For example, motorized equipment need not be allowed for the placement of small quantities of salt or other activities where such activities can reasonably and practically be accomplished on horseback or foot. On the other hand, it may be appropriate to permit the occasional use of motorized equipment to haul large quantities of salt to distribution points. Moreover, under the rule of reasonableness, occasional use of motorized equipment should be permitted where practical alternatives are not available and such use would not have a significant adverse impact on the natural environment. Such motorized equipment uses will normally only be permitted to those portions of a wilderness area where they had occurred prior to the area's designation as wilderness or are established by prior agreement.
3. The placement or reconstruction of deteriorated facilities or improvements should not be required to be accomplished using "natural materials", unless the material and labor costs of using natural materials are such that their use would not impose unreasonable additional costs on grazing permittees.

4. The construction of new improvements or replacement of deteriorated facilities in wilderness is permissible if in accordance with those guidelines and management plans governing the area involved. However, the construction of new improvements should be primarily for the purpose of resource protection and the more effective management of these resources rather than to accommodate increased numbers of livestock.

5. The use of motorized equipment for emergency purposes such as rescuing sick animals or the placement of feed in emergency situations is also permissible. This privilege is to be exercised only in true emergencies, and should not be abused by permittees.

In summary, subject to the conditions and policies outlined above, the general rule of thumb on grazing management in wilderness should be that activities or facilities established prior to the date of an area's designation as wilderness should be allowed to remain in place and may be replaced when necessary for the permittee to properly administer the grazing program. Thus, if livestock grazing activities and facilities were established in an area at the time Congress determined that the area was suitable for wilderness and placed the specific area in the wilderness system, they should be allowed to continue. With respect to areas designated as wilderness prior to the date of this Act, these guidelines shall not be considered as a direction to re-establish uses where such uses have been discontinued.

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Livestock Grazing and Wilderness

Background: Grazing has occurred in wilderness areas since 1964, when the Wilderness Act was established. The Wilderness Act states that, "the grazing of livestock where established prior to the established date of this Act (designating an area as wilderness), shall be permitted to continue". The Act uses "shall" -- rather than "may" -- indicating the strongest Congressional language there is. This is a mandate from Congress.

Sixteen years after the passage of the Wilderness Act, Congress affirmed livestock grazing in wilderness by stating that "The legislative history of this language is very clear in its intent that livestock grazing and activities and the necessary facilities to support a livestock grazing program will be permitted to continue in National Forest wilderness areas, when such grazing was established prior to classification of an area as wilderness."

It is important to carefully document all existing facilities, maintenance needs, and uses so that permittees' ability to graze livestock is protected into the future. In 2011, Senator Baucus and his staff took the lead to ensure that wilderness designation would not adversely affect livestock operators by working with the permittees and the Forest Service to create a document that reflects these existing uses and facilities and anticipates what types of maintenance and reconstruction activities may be needed in the future. Each rancher holding a permit that would be included in designated wilderness was encouraged to carefully review this document and make sure that it accurately reflects the current conditions and motorized access within their area of permitted use.

How has Congress strengthened this allowance over the years?

In 1980, Congress established the Congressional Grazing Guidelines, and they have been incorporated into almost every wilderness law since that time (some wilderness areas had no grazing). In 1984, the Congress noted that these guidelines were not to be treated as mere suggestions or recommendations -- but instead as direction from Congress incorporated by statute (referenced in the law), to be a major part of "the overall context of the purposes and direction of the Wilderness Act of 1964." Various state wilderness bills passed since that time and numerous court cases over the years have further strengthened grazing within new wilderness as well as the continued use of motorized access and livestock improvements in certain circumstances. In fact, the rancher's grazing operations are better protected in wilderness than in any other land management status. Ranchers have more guarantees that grazing shall continue in wilderness than in general National Forest lands and non-wilderness areas.

Are there cases where allotment plans have been restricted or grazing cancelled after an area has been designated as wilderness?

Yes, but these changes occurred because of ongoing documented resource impacts, not wilderness designation. In other words, the Forest Service retains the ability to take actions to protect the resource (including changes to stocking rates or rotation, fencing needs, or cancellation of the grazing lease) regardless of whether the area has been designated wilderness or not. Because the pro grazing guidelines only apply to wilderness area grazing (and have been tested in Court), ranchers generally have more guarantees of grazing continuing with wilderness designation (assuming no overgrazing and significant resource damage). The Grazing Guidelines are very clear that, "There shall be no curtailment of grazing in wilderness areas simply because an area is or has been designated as wilderness, nor should wilderness designations be used as an excuse by administrators to slowly 'phase out' grazing. Any adjustments in the number of livestock [...] should be made [...] giving consideration to legal mandates, range condition and the protection of the range resource from deterioration."

What do the Congressional Grazing Guidelines say?

The grazing language reinforces the grandfathering of livestock grazing in wilderness areas. The Guidelines allow the occasional use of motorized equipment to repair stock ponds, water lines, fix fence, etc. and with the possibility of new fences, water developments and other facilities primarily for the purposes of resource protection and more effective management. There is also the allowance for the possible increase of livestock numbers if there are no adverse impacts on important land, water, habitat and plant resources.